

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 04-28-04

File Number  
CP03-080

Application Type  
Conditional Use Permit

Council District  
8

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
659-05-038

### PROJECT DESCRIPTION

Completed by: John W. Baty

Location: East side of San Felipe Road 450 feet southerly of Aborn Road (3320 San Felipe Road)

Gross Acreage: 1.7

Net Acreage: 1.7

Net Density: n/a

Existing Zoning: R-1-5 Residence

Existing Use: Child Care Center

Proposed Zoning: No Change

Proposed Use: Child Care Center

### GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation  
Low Density Residential (5.0 DU/AC)

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: Single-family detached residential A-Agriculture

East: Single-family detached residential A(PD) Planned Development

South: Single-family detached residential A(PD) Planned Development

West: Church A-Agriculture

### ENVIRONMENTAL STATUS

Completed by: JWB

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: JWB

Annexation Title: Evergreen No. 144

Date: 7/27/81

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT/OWNER/DEVELOPER

KinderCare Learning Centers, Inc.  
Attn: Bruce A. Walters, Sr. Vice President and CDO  
650 NE Holladay Street, Suite 1400  
Portland, OR 97232

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: JWB

**Department of Public Works**

No comments

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**Other Departments and Agencies**

No comments

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**GENERAL CORRESPONDENCE**

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None

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, KinderCare Learning Centers, Inc., is requesting a Conditional Use Permit to allow the continued use of an existing 7,472 square foot child care facility on a 1.7 gross acre site in the R-1-5 Residence Zoning District. Daycare centers require a Conditional Use Permit in the R-1-5 Residence Zoning District.

The existing day care center was approved in 1986 with the issuance of Conditional Use Permit (File CP86-011) with a 5-year time limitation. The daycare center was built in 1988. The property owner failed to apply for a renewal of the permit therefore the permit expired in 1991.

In 1995, the applicant obtained a Conditional Use Permit (File CP95-004) "renew" their expired Conditional Use Permit. The subject permit included a condition whereby the permit would be valid for only five (5) years unless expiration was otherwise extended through the approval of a subsequent Conditional Use Permit Amendment (CPA). No such amendment was ever filed therefore the Conditional Use Permit has expired.

The applicant submitted the subject Conditional Use Permit, File No. CP03-080, on December 23, 2003 for re-approval of the existing facility. No modifications to the existing site or the existing facility are being proposed with this permit. Since there is no valid use permit this request has been reviewed as if it were a new project.

The project site has single-family detached residential uses directly to the north and across Lyter Way and San Felipe Road to the east and south. An existing church is adjacent to the project site to the west.

**ENVIRONMENTAL REVIEW**

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This proposal qualifies for an

exemption from CEQA under this categorical exemptions since the proposal is for an existing facilities involving negligible or no expansion of use.

## GENERAL PLAN CONFORMANCE

The proposed project is consistent with the site's San José 2020 General Plan Land Use/Transportation Diagram designation of Low Density Residential (5 DU/AC). The General Plan encourages the distribution of daycare facilities throughout the City including appropriate residentially designated locations.

## ANALYSIS

Analysis of this project was based on conformance with key elements of City Council Policy 6-14: Guidelines for Child Day Care. Since the existing daycare center has no current or valid Conditional Use Permit, staff has evaluated this proposal as if it were a new proposal.

***Facility Location.*** The existing daycare center's location on San Felipe Road is consistent with the Council Policy which encourages location of child care centers along Major Collectors as designated on the San José 2020 General Plan Land Use/Transportation Diagram.

***Traffic and Circulation.*** Two driveways off of San Felipe Road serve the site with parking along both sides of a two-way drive aisle that connects the two driveways. On-site circulation is designed to preclude vehicles from backing onto San Felipe Road.

***Parking and Drop-off.*** The Council Policy requires that all childcare centers provide parking in conformance with the parking requirements outlined in the Zoning Code in addition to short-term parking to accommodate child drop-off. With a maximum of 151 children per the operator's existing State licenses, the daycare center is required to provide 18 parking spaces. The existing facility has 29 spaces, 11 spaces in excess of what is required for a facility of its size.

***Site Design.*** Child care centers must conform to the site's Zoning District designation. The existing child day care center meets or exceeds the minimum setback requirements of the R-1-5 Zoning District. The existing 1.7 acre site adequately accommodates the existing buildings, parking, circulation and play areas. An existing 6-foot high solid masonry wall along the north and eastern property lines and a 6-foot high redwood fence along the western property line enclose the outdoor play areas. Landscaping is installed in all locations not occupied by the building, structures or parking and circulation.

***Number of Children and Operation.*** The use is presently limited to a maximum of 151 children based on the operator's State Licenses. This Conditional Use Permit, unlike previous approvals that were silent on the matter of maximum occupancy, establishes a maximum number of 151 children that this facility may accommodate. If the applicant desires to increase the occupancy of the center, an amendment to this Conditional Use Permit would be required.

Although the Council Policy suggests that childcare uses should be allowed to operate only between the hours of 6:00 a.m. and 7:00 p.m. Monday through Friday, this particular facility only operates between 6:30 a.m. and 6:00 p.m. Monday through Friday.

## Conclusion

This daycare center currently does not have a valid Conditional Use Permit since the previous approval was time conditioned to expire within five (5) years and has since expired. Unlike many other types of Conditional Use Permits that focus primarily on the issue of the use, the originally approved permit also allowed the physical construction of a new custom building and other related site improvements designed specifically to accommodate a daycare center facility. The intent of placing time limit conditions on this specific permit was to allow the City an opportunity to re-evaluate the operational aspects of the facility as it relates to potential impacts to adjacent residential uses. Given that the facility has been in operation since 1988 without any substantial complaints and since the applicant has invested a substantial amount of money into this permanent facility, staff does not feel that this permit should include any further conditions related to time limitations. The subsequent approval that occurred in 1995 provided the City ample opportunity to re-evaluate the project. The approval in 1995 by the Planning Commission did not contain any substantial changes to the original permit conditions.

As with all permits, in the event that operational issues associated with the existing facility become a nuisance or out of compliance with any of the permit conditions, the City retains the ability to issue an “Order to Show Cause” to reconsider the imposition of additional permit conditions or revocation of the permit.

## **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. The Planning Commission Agenda, which is posted on the City of San José website, includes a copy of the staff report for this project.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Low Density Residential (5 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-5 Residence Zoning District.
3. The project was found to be exempt from further environmental review under the provisions of Section 15301 of CEQA.
4. The project consists of an existing 7,472 square foot child day care center for up to 151 children on a 1.7-gross-acre site.
5. Existing outdoor play areas are located around the sides and back of the existing building and are secured by existing fences and gates.

6. Circulation and parking are provided for passenger vehicles in the existing parking lot located in front of the existing building. A total of 29 parking spaces are provided for the day care use.
7. The day care currently operates Monday through Friday from 6:30 a.m. to 6:00 p.m.
8. The existing day care facility was approved in 1986 with Conditional Use Permit, File No. CP86-011. This Conditional Use Permit had a 5-year time limitation.
9. CP86-011 expired in 1991; the applicant failed to obtain a permit extension.
10. The existing day care facility was re-approved in 1995 with Conditional Use Permit, File No. CP95-004. This Conditional Use Permit had a 5-year time limitation.
11. CP95-004 expired in 2000; the applicant failed to obtain a permit extension.
12. The applicant filed the subject Conditional Use Permit, File No. CP03-080 on December 23, 2003 for re-approval of the existing daycare facility.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project conforms to City Council Policy 6-14, Guidelines for Child Day Care.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "KinderCare Learning Centers, Inc.," dated November 14, 1986, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).

3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
7. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
8. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property and in conformance with the City Lighting Policy. Any new onsite lighting would be subject to a Permit Adjustment.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted.
10. **Roof Equipment.** All roof equipment shall be screened from view.
11. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
12. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
13. **Hours.** The child day care center shall be limited to operation between the hours of 6:30 a.m. to 6:00 p.m. Monday through Friday, unless the City approves a subsequent Conditional Use Permit or amendment thereto for other hours of operation.
14. **Maximum Number of Children.** The capacity of the proposed childcare center shall be limited to a maximum of 151 children.
15. **Staggered Drop-Off/Pickup Times.** To reduce any potential on-site circulation conflicts or over-concentration of vehicles on the site at any given time, the applicant is required to have a contractual agreement with all clients (parents/guardians) that evenly divides the drop off and pick-up times of the children into two separate non-overlapping time periods. The applicant shall ensure compliance with this contract agreement. Copies of said contract shall be made available to the City upon request.
16. **Amplified Sound.** All amplified sound shall be contained within the building and the building shall be adequately insulated to prevent sound from emanating outside.

17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Other Permits.** The applicant shall obtain necessary permits from outside agencies with jurisdiction over the child day care use.
19. **Signs.** No new signs are approved at this time.
20. **State License.** The applicant shall obtain all required licenses/permits and shall operate and maintain these in good standing.

### CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Attachments: City Council Policy for Child Day Care

Attachments

cc:



SR/Zoning Folder/2002/